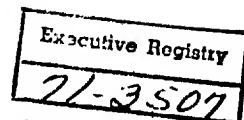


THE WHITE HOUSE
WASHINGTON



OLC 71-0575

CONFIDENTIAL/LIMDIS

* June 28, 1971

MEMORANDUM FOR


THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE

SUBJECT: 1925 Geneva Protocol

The 1925 Geneva Protocol is deadlocked in the Senate Foreign Relations Committee, which has requested that the Administration reconsider its position on the question of riot control agents and chemical herbicides. (See Senator Fulbright's attached letter to the President.)

Before forwarding this matter to the President for reply, I believe we should have a careful review of the situation, alternative responses including their full advantages and disadvantages, and agency positions for his consideration. This review should be submitted by August 1, 1971.

NSC Review Completed


Henry A. Kissinger

cc: The Director of Central Intelligence
The Director, United States Arms Control
and Disarmament Agency
The Chairman, Joint Chiefs of Staff
The Director, Office of Science and Technology

Attachment

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United States Senate

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

CARL MARCY, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

March 5, 1971

Dear Mr. President:

The Committee on Foreign Relations has recently completed hearings on the Geneva Protocol of 1925 which you submitted to the Senate on August 19, 1970. At its last business meeting the Committee discussed the testimony which had been heard and reviewed the possible courses of action open to it. The Members decided that before the Committee gave further consideration to the Protocol I should privately communicate to you certain views which many of us now hold concerning United States adherence to the Protocol.

At the outset let me express the Committee's strong approval of the initiatives which you have already taken in revising U.S. policy with regard to chemical and biological weapons. Your decisions to renounce altogether biological and toxin warfare, as well as the first use of lethal and incapacitating chemical weapons, were a major contribution toward a more secure future for mankind. All of us appreciate the difficulties which confronted you in taking these steps and in deciding to resubmit the Geneva Protocol to the Senate.

There is no question of the Committee's strong support for the objectives of the Geneva Protocol. Indeed it is because we attach such great importance to the Protocol that many of us are reluctant to proceed further toward its ratification on the basis of the understandings and interpretations which have been attached to it by the Secretary of State.

The President
The White House

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I believe it accurate to say that when our hearings began few of the Members had firm views on the question of tear gas and herbicides. Having heard a number of expert witnesses on all aspects of the Protocol many Members now consider that it would be in the interest of the United States to ratify the Protocol without restrictive understandings, or, if that is not possible at this time, to postpone further action on the Protocol until it is.

The Secretary of State's position on tear gas and herbicides appears to rest primarily on the grounds that the Protocol was not intended to prohibit their use. Having heard the legal testimony on both sides of this issue, many Committee Members conclude that an adequate legal argument can be made either for or against that interpretation. Given the Protocol's acknowledged ambiguity, we tend to agree with the view expressed in testimony by Mr. George Bunn, former General Counsel of the Arms Control and Disarmament Agency, who said that "any future interpretation of the Protocol should depend less on the negotiating history than on a realistic appraisal of the pros and cons -- military, diplomatic and arms control -- of the use of these agents in the future."

In this connection, we note that the use of herbicides in Vietnam is now being discontinued. It would appear that their actual utility in Vietnam has been marginal and that the crop destruction program may well have been counter-productive. Furthermore, the more we learn about the impact of the herbicide warfare on the ecology of Vietnam, the more disturbing are its implications for the future. As Dr. Arthur W. Galston, an eminent biologist from Yale, reminded the Committee, "If man makes conditions unsuitable for vegetation on this earth, he thereby makes conditions unsuitable for his own existence."

Testimony on the question of tear gas also raised considerable doubt in the minds of many Members as to the desirability of its future use in war by the United States.

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Dr. Matthew Meselson of Harvard, who testified before the Committee and who has made a careful study of the military use of tear gas, presented the following conclusions:

1. The military value of riot gas is very low.
2. Our overriding security interest in the area of chemical and biological weapons is to prevent the proliferation and use of biological and lethal chemical weapons.
3. Our use of riot gas in war runs directly counter to this fundamental interest.

Dr. Meselson's view coincides closely with that expressed by another highly qualified witness, Dr. Donald G. Brennan of the Hudson Institute, a military strategist who last testified before the Committee in support of the Safeguard Anti-Ballistic Missile System. After a skeptical critique of many of the familiar arguments against tear gas and herbicides, Dr. Brennan concluded that the military cost of giving up tear gas and herbicides appeared relatively low and that the United States position could therefore properly "be dominated by 'decent respect for the opinions of mankind' and accept the interpretation that the Protocol embraces harrassing agents and herbicides."

The latter point leads to another consideration which troubles many Members of the Committee. This is the fact that the overwhelming majority of the nations of the world already agree, as evidenced by an 80-3 vote in the U.N. General Assembly, that tear gas and herbicides should be prohibited under the Geneva Protocol. If, at this late date the United States adheres to the Protocol but in so doing places its weight behind a restrictive interpretation, this cannot help but weaken the effect of the Protocol. The Committee finds it difficult to believe there would be any positive moral force to our becoming a party to the Protocol only on condition that we reserve the right to keep on doing

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as we wish despite the fact that most other nations believe it undesirable. Furthermore, I sense a reluctance on the part of Committee members to give advice and consent to an international agreement in the face of a virtual certainty that our interpretation will be challenged or rejected. It will not suffice, as the Secretary of State suggested, to ratify now, and work out the problems later.

We believe that these arguments are, of themselves, sufficiently compelling to warrant the Committee's request that you give further consideration to the tear gas and herbicide question. In addition, as you know, there are now several studies in progress on the use of tear gas and herbicides in Vietnam, including one requested by you as a basis for examining the implications and consequences for U.S. policy of their future use in war. It seems to us that all of these studies, but in particular the latter, should be available before any final action is taken with regard to ratification of the Protocol.

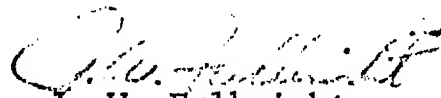
Although we would agree that the Protocol should long ago have been ratified by the United States, it is perhaps unfortunate that it comes before the Senate at a time when the United States is at war and actively employing chemical weapons which most nations consider to be prohibited by the Protocol. Possibly by the time the results of these additional studies are available the war in Indochina will be ended, or at least the level of conflict there will have been reduced to a point where our further use of either tear gas or herbicides will be unnecessary. This alone would make it easier for all concerned to make a dispassionate assessment of the issues involved.

As a practical matter I have considerable doubt that the Protocol could now receive the advice and consent of the Senate on the terms laid down by the Secretary of State, i.e., that you might not ratify the Protocol if the proposed understandings are modified by action of the Senate. At present the prospects for the Protocol are clouded by strongly

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held views on both sides and I personally would not wish to see it risked a second time under such circumstances. The Committee asks therefore that the question of the interpretation of the Protocol be reexamined considering whether the need to hold open the option to use tear gas and herbicides is indeed so great that it outweighs the long-term advantages to the United States of strengthening existing barriers against chemical warfare by means of ratification of the Protocol without restrictive interpretations. If the Administration were to take the longer and broader view of our own interests, I cannot imagine any serious opposition to that decision, either here at home or abroad. On the contrary, I personally believe that were you to take this initiative your action would be regarded as truly courageous and possessed of real moral force.

Sincerely yours,


J. W. Fulbright
Chairman

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